

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. Z-1125985  
Issued to: Daniel J. FARMER

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2077

Daniel J. FARMER

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 17 January 1969 a Hearing Examiner, (now Administrative Law Judge) of the United States Coast Guard at San Francisco, California, revoked Appellant seaman's document upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman/watertender on board the United States SS YOUNG AMERICA under authority of the document above captioned, on or about 11 August 1967, Appellant was wrongfully and unlawfully in possession of marijuana, a legally defined narcotic drug.

Appellant did not enter an appearance at the hearing, after due notice of the time and place thereof. The Judge entered a plea of not guilty to the charge and specification in Appellant's behalf. Appellant was not represented by counsel, but had been notified of his right to such representation.

The Investigating Officer introduced in evidence three exhibits and no testimony, other than his own remarks concerning the exhibits.

Since the hearing was held in Appellant's absence, no evidence was offered in his defence.

On the basis of the hearing, the Judge rendered a decision on 17 January 1969 in which he concluded that the charge and specification had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision and order was served on 18 November 1975. Appeal was timely filed on 24 November 1975.

FINDINGS OF FACT

On 11 August 1967, Appellant was serving as a

fireman/watertender on board the United States SS YOUNG AMERICA and acting under authority of his document while the ship was in the port of Yokohama, Japan. While ashore in Yokohama on 11 August Appellant was arrested by Japanese police for possession of marijuana. He was charged with the possession of approximately 2.1 grams of "marijuana weeds", and was tried and found guilty by the Yokohama District Court of Justice. The Yokohama court sentenced FARMER to ten months' imprisonment at hard labor, and suspended the sentence for three years from the date of the judgment's finality. [I note from the record that certain issues of fact are rather clouded, in that FARMER was found to be in possession of 2.1 grams of marijuana while only 1.1 grams were confiscated, and the Judge's findings of ultimate facts inadvertently record the events as having occurred in 1968, rather than in 1967 as noted in the certified translation of the record of the Japanese trial and in the shipping articles of the SS YOUNG AMERICA.]

When FARMER returned, arriving at San Francisco on 19 November 1968, he was served with the charge and specification on which this case is based, was notified of the hearing of the matter to be conducted on 27 November 1968, and was at the same time notified of his right to counsel. FARMER failed to appear at the hearing after this notice, and the hearing was therefore conducted in his absence, the Judge having entered a plea of not guilty in his behalf. The Judge found that the charge and specification were proved, and entered an order of revocation, that order being served on FARMER at New York on 18 November 1975.

It is noted that a period of about seven years passed from entry of the Judge's order in this matter to service of that order on FARMER. The delay resulted from difficulty in locating the Appellant because, during the time between entry of the order and ultimate service of the order, Appellant only went to sea nine times on voyages of from two to twenty-six days in length, and each of those voyages was either a coastwise or a Great Lakes voyage, so that Appellant was not required to sign aboard through a Coast Guard shipping commissioner. Had he signed on in the presence of a Coast Guard shipping commissioner, he would quite probably have been identified as being on the "wanted list," and subjected to service of the Judge's order at a much earlier date. It is also noted that service of the order by registered mail was attempted from time to time, but delivery of the order was apparently ignored or rejected by Appellant.

#### BASES OF APPEAL

Appellant has submitted a brief in his own behalf, alleging errors in the proceedings. He notes the inadvertent misdating in the Judge's order which should have read "1967" rather than "1968,"

and the variation between 2.1 and 1.1 grams of marijuana to which the Japanese court makes reference, as part of his basis for asserting that there are fatal defects in the record justifying reversal. Appellant also submits a copy of a certificate of discharge from the SS LINDENWOOD VICTORY dated 17 August 1968, and claims that he could not have been in a Japanese prison at about that same time. The brief asserts that there is no prima facie proof as defined at 46 CFR 5.03, and claims that, essentially, the minor defects in the record should be taken in the aggregate as sufficient error to justify reversal.

APPEARANCE: Appellant pro se.

#### OPINION

I find from review of the record that the errors in statements of fact to which Appellant refers were minor, and not prejudicial. The certificate of discharge from the SS LINDENWOOD VICTORY is irrelevant, since it is used only to "bootstrap" from the inadvertent misdating in the Judge's order to a claim that Appellant couldn't have been where he was found to be. The competent evidence of record makes it clear that Appellant was in Japan, and convicted of marijuana possession, in August of 1967, and that this conviction is the one to which the Judge's findings of fact refer.

The assertion that prima facie case is not made out by the evidence is based on a misunderstanding of the meaning of the term "prima facie" as used at 46 CFR 5.03-3. Simply stated, evidence of possession of narcotics, including marijuana, is enough in and of itself to make out a prima facie case of misconduct. The evidence clearly establishes that Appellant was in possession of at least 1.1 grams of marijuana, so that prima facie proof is in the record.

While certain earlier Decisions on Appeal have found that possession of very minor amounts, or "fragments," of marijuana, was not per se a hazard to safety of lives and property at sea (Decisions on Appeal 745, 746, 748, 759 and 764), and thus not a sufficient basis without more to sustain a charge of wrongful possession, I find that possession of 1.1 to 2.1 grams is not such a minor amount. It is noted that one kilogram of marijuana will produce about 3,3000 cigarettes, Leary v. United States, 395 U.S. 6, at 51 (1968), so that 1.1 grams would be enough to produce 3-4 cigarettes. This amount is clearly more than the "fragments" to which the earlier Decisions on Appeal make reference.

I also specifically find that Appellant's possession of marijuana on shore while his ship was in port was possession while serving under the authority of his document. In Appeal Decision

1987 (BROWN), it was noted that "There is ample authority holding that a person is in fact in the service of his vessel and serving under the authority of his documents while on shore leave. See Decision on Appeal No. 1894 and Aguilar v. Standard Oil Co., 318 U.S. 724."

#### CONCLUSION

I conclude, on the basis of the foregoing that Appellant was, on 11 August 1967, while the SS YOUNG AMERICA was in the port of Yokohama, Japan, wrongfully in possession of marijuana, and that Appellant was serving under authority of his Merchant Mariner's document at that time and place. The charge and specification are therefore found to be proved by substantial evidence of a reliable and probative nature. It is also concluded that the Coast Guard exercised reasonable diligence in locating Appellant for service of the revocation order and the inordinate delay was the sole fault and responsibility of Appellant.

#### ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 17 January 1969, is AFFIRMED.

O. W. SILER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 24th day of September 1976.

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